APPEAL NO. 050170
FILED FEBRUARY 28, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on July 19, 2004. In Texas Workers' Compensation Commission Appeal No. 041991-s, decided October 6, 2004, we affirmed the hearing officer's determination on a jurisdictional issue and remanded the case for the inclusion for review of the respondent's (claimant) Exhibit Nos. 1 through 8, and for the hearing officer to consider (Dr. W) July 15, 2004, report as newly discovered evidence with regard to the Independent Review Organization's (IRO) decision, and the issue of whether the claimant's (proposed) spinal surgery is medically necessary.

A CCH on remand was held on December 10, 2004. The hearing officer determined that the IRO decision is not supported by a preponderance of the evidence and that the claimant's (proposed) spinal surgery is reasonable and necessary medical treatment for the compensable injury.

The appellant (self-insured) appealed the hearing officer's determinations, contending that an IRO decision that the claimant's surgery was not medically necessary to treat the claimant's condition should be upheld and that the correct analysis was to consider the surgery at the time it was proposed. The claimant responds, urging affirmance.

DECISION

Affirmed.

The case file and CCH records forwarded with Appeal No. 041991-s, *supra*, did not have the claimant's exhibits. After affirming a determination on the jurisdictional issue we remanded the case as noted previously. A hearing on remand was conducted with both parties submitting additional exhibits. At issue was whether spinal surgery was reasonable and necessary. The IRO and Dr. W had noted that the claimant had several risk factors which would mitigate against spinal surgery including the fact that the procedure was controversial, the claimant was overweight, and that the claimant had a kidney removed in a donor nephrectomy in 1996. The hearing officer in Appeal No. 041991-s, found that the IRO decision was not supported by a preponderance of the evidence and that the proposed spinal surgery was reasonable and necessary medical treatment for the compensable injury. The claimant had the proposed spinal surgery on September 30, 2004. Pursuant to our remand a CCH on remand was held on December 10, 2004. The claimant testified at that hearing that her surgery was successful and that while her activities were limited she was relatively pain free. The self-insured asserted, as they had at the July 19, 2004, CCH, that the proposed surgery was controversial and not medically reasonable and necessary. The claimant offered the medical reports of a surgeon that initially suggested surgery and the self-insured's

required medical examination doctor who stated "that the proposed fusion would have the greatest likelihood of relieving the discogenic pain." The medical reports of treating surgeon were also offered in support of the assertion that the proposed spinal surgery was reasonable and necessary.

In this case, the hearing officer did as requested and considered Dr. W's report of July 15, 2004, still found that the IRO decision was not supported by a preponderance of the credible evidence and that the proposed spinal surgery is reasonable and necessary medical treatment for the compensable injury. There was conflicting medical evidence on the disputed issue. The issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The factors emphasized by the self-insured in challenging the hearing officer's determination on appeal are the same factors it emphasized at the hearing and the prior CCH. The significance, if any, of those factors was a matter for the hearing officer in making his credibility determinations. The medical records support the hearing officer's determination. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Margaret L. Turner
Appeals Judge